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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/700,194 | 11/03/2003 | Randy Edward Benway | 114154-050 | 3952 |

24573 7590 03/25/2005

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| EXAMINER |
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KOVACS, ARPAD F

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| ART UNIT | PAPER NUMBER |
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3671

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/700,194

Applicant(s)

BENWAY ET AL.

Examiner

Árpád Fábián Kovács

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 25-30 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-24 and 31-38 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I: claims 1-16

Group I: a cutting blade, an insert that is removably attached to the rear portion of the mower deck; classified in class 56, subclass 17.4.

Group II: claims 17-20

Group II: a cutting blade, an insert attachable to the rear portion (note: not removably attached, and only requires to be capable of being attached) by at least one fastener adjacent to the exterior surface of the rear portion of the mower deck sidewall (note: not required to be on the exterior surface, adjacent is too broad for that); classified in class 56, subclass 320.2.

Group III: claims 21-24

Group III: a mulching blade, a mulch ramp, an insert removably attachable to the rear portion of the sidewall; classified in class 56, subclass 17.3.

Group IV: claims 31-34

Group IV: note: no cutting blade, nor mulching blade required by the claim; a discharge control device (note: does not require to be an insert, it can

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be a remote control or other control device), at least one securing member having a portion that has a position outside of the cutting chamber (note: it is more specific to the portion being outside, unlike in Group II for the at least one fastener); classified in class 56, subclass 350.

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Group V: claims 35-38

Group V: machine operable in a mulching mode and a discharge mode (note: the claim does not require a cutting/mulching blade), a plurality of wheels & power unit & at least one drive member (note: none of this required by any of Groups I-IV), a discharge control device (note: does not require to be an insert, it can be a remote control or other control device), at least one securing member having a portion that has a position outside of the cutting chamber (note: it is more specific to the portion being outside, unlike in Group II for the at least one fastener); classified in class 56, subclass 350.

The inventions are distinct, each from the other because of the following reasons:

Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01) (note see above different functions & elements). In the instant case the different inventions:

Groups I & II & III are each distinctly patentable from each other and from Groups IV or V as outlined above. Applicant is required to elect Group I (claims 1-16) or Group II (claims 17-20) or Group III (claims 21-24) or Groups IV & V (claims 31-38; it is noted that Groups IV & V are grouped together, because Groups V & IV are a combination and subcombination, respectively, however, the combination appear to contain all elements of the subcombination).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács
Primary Examiner
Art Unit 3671

ÁFK